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CONSIDERATION OF ISSUES RELATING TO THE PROTECTION AND PROMOTION
OF HUMAN RIGHTS, INCLUDING THE IMPLEMENTATION OF INTERNATIONAL AND
REGIONAL HUMAN RIGHTS INSTRUMENTS

Regional human rights instruments and institutions

Report of the Secretary-General

1. It may be recalled that the concern of the United Nations with the promotion and protection of human rights stems directly from the preamble of the Universal Declaration of Human Rights that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". Furthermore, the Universal Declaration of Human Rights states "All human beings are born free and equal in dignity and rights. ... Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The international community thus accepted an obligation to establish guarantees for human rights and confirmed in the Universal Declaration its commitment to the promotion and protection of human rights ideals shared by many political, social, cultural and religious traditions.

2. Intergovernmental and regional arrangements for the promotion and protection of human rights and fundamental freedoms exist in America, in Europe and in Africa. The annex to this report gives an overview of these arrangements and the relevant institutions.

3. The Inter-American system of human rights which is closely linked with the Universal Declaration, includes inter alia the right to life, liberty, family, nationality and equality before the law and judicial protection. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have been established as regional institutions for the promotion and protection of human rights and have been accorded specific functions and powers.

4. The institutions established under the European Convention on Human Rights, namely the European Commission on Human Rights and the European Court of Human Rights, have evolved over the years in order to supervise and enforce the rights and freedoms enshrined in the Convention, and the series of additional protocols.

5. An important point in the evolution of regional arrangements for the promotion and protection of human rights was the adoption, in 1981, by the Organization of African Unity of the African Charter on Human and Peoples' Rights. Having been ratified by an absolute majority of States in the region (32 States), the Charter came into force on 21 October 1986. The African Charter includes not only rights but also duties - an approach which though new in international instruments symbolizes the African conception of rights as inseparable from duties. These rights and duties apply to individuals and groups alike. The African Charter also places special emphasis on the rights and duties of the community - the rights to peace, solidarity, a healthy environment and development, priorities inter-linked with Africa's place in the concert of Nations. Beyond the different formulations of rights and the diverse jurisdictions and competences vested in them, which derive from the specific legal traditions, constitutional framework and social and economic circumstances of each region, there exist certain common parameters, based on the Universal Declaration of Human Rights that govern the operation of existing regional arrangements.

6. For the Asian region, the question of regional institutions for the promotion and protection of human rights has been the subject of continuing consultations. A seminar on national, local and regional arrangements for the promotion and protection of human rights in the Asian region was organized by the United Nations Division of Human Rights, in Colombo from 21 June to 2 July 1982. Among the views expressed at this seminar was the need to take into account the economic, social and political conditions as well as the specific needs of the Asian region; it may be necessary to be both selective and innovative, and to choose those aspects best suited to the region. It was also recalled that the existing regional arrangements had drawn upon the restatement of certain universal norms within the context of a regional instrument. From 7 to 11 May 1990, the Centre for Human Rights, organized in Manila the first Asia-Pacific workshop which examined inter alia the question of regional institutions and arrangements for the promotion and protection of human rights. The workshop emphasized the role played by the Universal Declaration as a source of inspiration for national and international endeavours for the protection and promotion of human rights and fundamental

freedoms, the efforts of the international community to help to realize these rights, particularly through the existing United Nations human rights machinery, as well as the importance of constructive and well-informed public opinion for the universal enjoyment of the rights and freedoms enshrined in the various international instruments.

7. Accordingly, should the countries of the Asian region so desire, it should be possible for the Regional Meeting for Asia to recommend to the World Conference to further develop the possibilities of modalities for regional arrangements for the Asian region, taking into account the following considerations:

(a) Encouragement of Asian Member States to establish institutions to promote and protect human rights;

(b) Promotion of the study and dissemination of human rights literature and teaching at the academic level;

(c) Examination of the feasibility of the establishment of appropriate machinery for furthering the principles for the establishment of such a regional mechanism.

Annex

REGIONAL HUMAN RIGHTS INSTRUMENTS AND INSTITUTIONS

Introduction

1. The present report gives an overview of the principal regional human rights instruments and institutions. It reviews the basic instruments, organs and institutions of the Organization of American States, the Council of Europe and the Organization of African Unity. It also describes the substantive provisions of these instruments in a general manner, but reference should be made to the texts of the instruments for their precise provisions. As the aim of this report is to describe the regional structures and the basic human rights that they promote and protect, specialized regional instruments dealing with particular aspects of human rights are not discussed. 1/

I. THE ORGANIZATION OF AMERICAN STATES

A. Background

2. The Organization of American States traces its origins to the International Union of American Republics, established by the First International Conference of American States in 1890. 2/ The Organization of American States, as such, was established by the Charter of the OAS, which was signed at the Ninth International Conference of American States, Bogota, in April 1948. The OAS Charter entered into force in 1951 and it was amended in 1967 and again in 1985.

3. The principal human rights instruments of the OAS are the 1948 American Declaration of the Rights and Duties of Man and the American Convention on Human Rights, also called "Pact of San José, Costa Rica", of 1969 3/ and these instruments are applied by two key regional human rights institutions, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. Since not all member States of the OAS have ratified the American Convention, the American Declaration continues to be applied to those States by means of the incorporation of the Declaration into the OAS Charter. The Convention establishes the procedures for the operation of the Commission and the Court for matters under the Convention, whereas the provisions of the Statute of the Commission and its regulations govern the procedures of the Commission that are applicable to matters brought against States which are not parties to the Convention.

B. Substantive provisions

4. The inter-American system of human rights, with its source in the American Declaration, has much in common with the Universal Declaration on Human Rights. This is to be expected, since the two documents were closely contemporaneous in their drafting and adoption.

5. The inter-American human rights system protects, through the Declaration and the Convention, the rights to life; humane treatment; personal liberty; family; nationality; asylum; fair trial; juridical personality; property; equality before the law and equal protection of the laws; and judicial protection. The Declaration and the Convention also cover numerous freedoms, among which are: freedom from slavery; arbitrary arrest and ex post facto laws; freedom of investigation and opinion; and freedoms of conscience, religion, thought and expression, assembly and association, movement and residence.

6. The Convention does not itself guarantee economic, social or cultural rights, although it does call, in article 26, for measures to achieve the progressive realization of standards in these fields that are set forth in the OAS Charter.

C. Institutions

1. The Inter-American Commission on Human Rights

7. Provision was made for the creation of the Inter-American Commission on Human Rights in 1959, and the Commission began to function in 1960. 4/ Its mandate is to "promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters" (Charter of the OAS, art. 112). It is composed of seven members who are elected in their personal capacity for a term of four years by all member States of the OAS. The Commission has authority, by virtue of the American Convention on Human Rights, to receive petitions from any person, group of persons or non-governmental organizations alleging that any State party to the Convention has violated the Convention (art. 44). Moreover, provided the State against which a complaint is made has accepted the competence of the Commission, it has authority to examine inter-State complaints (art. 45); nine States (Argentina, Chile, Colombia, Costa Rica, Ecuador, Jamaica, Peru, Uruguay and Venezuela) have accepted the competence of the Commission to deal with inter-State complaints.

2. The Inter-American Court of Human Rights

8. The Inter-American Court of Human Rights was established by the entry into force of the American Convention on Human Rights. It consists of seven judges, elected by the States parties to the Convention, to serve in their individual capacities for a six year term. At the date of the present Report, 23 States were party to the Convention and 14 of those States had, under article 62, accepted the jurisdiction of the Court on all matters relating to the interpretation and application of the Convention (Argentina, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela). Only the States parties and the Commission may submit a case to the Court for adjudication;

individuals have no standing to do so. Judgements of the Court in the exercise of its adjudicatory (or "contentious") jurisdiction are binding on the parties to the case.

II. THE COUNCIL OF EUROPE

The European Convention on Human Rights

1. Background

9. The European Convention for the Protection of Human Rights and Fundamental Freedoms (also called "European Convention on Human Rights") can be seen as a response to the human rights violations of World War II. Establishing an international institution to supervise the protection of human rights at the national level was seen as a means to preclude any resurgence of totalitarianism. In September 1949, when the issue of international protection of human rights attracted great attention, the Consultative Assembly of the Council of Europe (nowadays called the Parliamentary Assembly) adopted a report by the Legal Committee, which proposed to guarantee basic rights on the European level through an international convention. On the basis of this report government experts prepared a draft text in the spring of 1950, which as revised was approved in August 1950, by the Committee of Ministers.

10. As of the date of this report there are 25 States parties to the Convention. The European Convention has been modified on a number of occasions. As many as 10 protocols to the Convention have been adopted over the years to clarify certain aspects of the practice and procedure of the human rights institutions of the Council of Europe and to expand and adjust certain substantive provisions of the Convention in light of changing circumstances. There are three institutions which are responsible for the supervision, and ultimately, enforcement of the rights and freedoms laid down in the Convention, the European Commission on Human Rights, the European Court of Human Rights and the Committee of Ministers.

2. Institutions

(a) The European Commission on Human Rights

11. The powers and functions of the European Commission on Human Rights are determined by articles 20 to 32 of the Convention and by Protocols 3, 5 and 8 thereto. It consists of a number of members equal to the number of States parties to the Convention. Members of the Commission are elected by the Committee of Ministers of the Council of Europe to serve in their individual capacities for a term of six years.

12. Pursuant to article 24, any State party may refer an alleged breach of the Convention by another State party to the Commission, this implies that a State party may allege breach of the rights of nationals of other States

parties before the Commission. As well, the Commission may receive petitions from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of the Convention by a State party (art. 25). This authority is subject to the conditions that the State concerned must have expressly recognized the competence of the Commission to examine such petitions and that domestic remedies must have been exhausted, according to the generally recognized rules of international law (art. 26).

13. All States party to the Convention have recognized the competence of the Commission to examine individual petitions.

(b) The European Court of Human Rights

14. The jurisdiction of the European Court of Human Rights is defined in articles 38 to 54 of the Convention. It consists of the same number of judges as member States of the Council of Europe. 5/ A judge need not be a national of the member State that nominates him or her, but no two judges may be of the same nationality. The judges are elected by the Parliamentary Assembly of the Council of Europe, to serve in their personal capacity for a term of nine years. Pursuant to article 46, States may declare that they recognize the compulsory jurisdiction of the Court to consider cases that are referred to it either by a State party or by the Commission. All States parties to the Convention of Europe except the two most recent members have recognized the jurisdiction of the Court.

15. In relation to a State that has made such a declaration, both inter-State complaints under article 24 and individual petitions may be referred to the European Court, within three months of transmission of a report by the Commission to the Committee of Ministers. Only a State concerned (i.e. the State which referred the case to the Commission, the State whose national is the victim of the alleged violation and the State against which the complaint was made) or the Commission may refer a matter to the Court. Even if dissatisfied with the Commission's disposition of the matter, an individual has no independent right to submit the case to the Court for consideration. The parties before the Court are the Commission and the State(s) concerned. An individual has no formal standing before the Court, although as confirmed by the rules of procedure, the Court will invite the applicant's counsel to represent or assist the applicant before the Court. 6/

16. In proceedings before the Court, the report of the Commission is considered and given weight, but the Court is not bound by any aspect of the report. The Court not only has jurisdiction to review the Commission's report, but may also assess and make its own findings of fact. In reaching its decisions, the Court may not be unanimous; separate opinions may be expressed by individual judges. The judgement of the Court is final and it may, pursuant to article 50 of the Convention, afford "just satisfaction" to the injured party, if it finds a violation of the Convention. The States parties agree to abide by a decision of the Court.

17. Pursuant to the Second Protocol to the Convention, the European Court was endowed with competence to render advisory opinions. At the request of the Committee of Ministers, the Court may give opinions on legal questions concerning the interpretation of the Convention and its Protocols. In the exercise of its jurisdiction up to September 1992, the Court has delivered 363 judgements under the Convention. An additional 65 proceedings are pending.

(c) The Committee of Ministers

18. The Committee of Ministers is established by the Council of Europe as an organ of the Council, with one member from each Member State. Its functions in relation to the European Convention on Human Rights are essentially supervisory and executive. As indicated, the Commission transmits to the Committee of Ministers a report on any case found to be admissible that has not been resolved by friendly settlement procedures (art. 31). In the event that the matter is not thereafter referred to the Court, the Committee of Ministers decides whether a violation of the Convention is established and if so, it prescribes a period for the State concerned to take any measures required. Where a case has been referred to the Court and it finds a violation of the Convention, its decision is transmitted to the Committee of Ministers which is charged by article 54 of the Convention with supervising the execution of the decision.

III. THE ORGANIZATION OF AFRICAN UNITY

The African Charter on Human and Peoples' Rights

1. Background

19. The idea of developing an African convention on human rights was first raised at a symposium of African jurists organized by the International Commission of Jurists (ICJ) in Lagos in 1961. ^{7/} It was developed in the following years with the support of the ICJ in a number of conferences. Then, at its 34th session, the Commission on Human Rights adopted resolution 24 (XXXIV) of 8 March 1978, in which it requested the Secretary-General to take appropriate steps to give the Organization of African Unity, if it so requests, such assistance as it may require in facilitating the establishment of a regional commission on human rights for Africa. Pursuant to this resolution, a United Nations seminar held in Monrovia from 10-21 September 1979 adopted a number of concrete proposals relating to the establishment of such a commission.

20. Also in Monrovia, in June 1979, the Summit of Heads of State and Government of the Organization of African Unity (OAU) decided to convene a meeting of high-level African experts to draw up a preliminary draft of a convention which would provide for the promotion and protection of human rights in Africa and the establishment of an African body for that purpose.

21. The African Charter on Human and Peoples' Rights was adopted at the Nairobi Summit of Heads of State and Government of the OAU in June 1981. The Charter came into force in October 1986, after having been ratified by a majority of States members of the OAU. 8/ The Charter is notable for its statement of rights and the duties of members of society, the organization and operation of its institutions, and also for its articulation of the rights of peoples, which is unparalleled in other human rights conventions.

2. Substantive provisions

22. The African Charter enshrines three categories of substantive provisions and States parties undertake by article 1 to adopt legislative or other measures to give effect to these rights, duties and freedoms. Articles 2 to 18 lay down a series of rights and freedoms of the individual. The rights include non-discrimination, equality before the law and equal protection of the law (arts. 2 and 3); the inviolability of the human being, respect for life and personal integrity (art. 4); the rights to respect of dignity, recognition of legal status and the prohibition of the exploitation of man, including slavery and torture (art. 5). Important rights such as liberty and security of the person and freedom from arbitrary arrest or detention are set out in article 6. The right to have one's cause heard (including the right to appeal against violations of fundamental rights, the presumption of innocence, the rights to counsel, trial within a reasonable time and non-retroactivity of penal law) is also covered in article 7.

23. The Charter also extends to freedom of conscience and religion (art. 8), the right to information and to express and disseminate opinions (art. 9) and to the freedoms of association and assembly (arts. 10 and 11) and the right to freedom of movement, including asylum and the prohibition of mass expulsions (art. 12). It also guarantees such important matters as the right to participate in government, access to public service and public property (art. 13) and the rights to property (art. 14), to work, including the right to equal pay for equal work (art. 15), the right to enjoy the best attainable health (art. 16) and the right to education (art. 17). The Charter also makes provision for the protection of the family and the right of the aged and the disabled to special measures of protection, along with a State duty to assist the family, to ensure the elimination of discrimination against women and the protection of women and children (art. 18).

24. The Charter sets out rights of peoples in articles 19 to 26. These provisions include such principles as the equality of peoples and the rights of peoples to existence and self-determination (arts. 19 and 20). The Charter stipulates the right of peoples to freely dispose of their wealth and natural resources, including the right of a dispossessed people to the lawful recovery of its property (art. 21). Under article 22, peoples have the right to economic, social and cultural development and States have the duty to ensure the exercise of the right to development. The rights of peoples to peace and security and to a general satisfactory environment favourable to their development are set out in articles 23 and 24. In article 25, States are

subject to a duty to promote and to ensure, through education and other means, respect for the rights and freedoms in the Charter. They are also bound by a duty to guarantee the independence of the Courts and to allow the establishment of national institutions for the promotion and protection of rights and freedoms (art. 26).

25. Chapter II of the African Charter prescribes certain duties of the individual towards the family and society, the State and other recognized communities, including the international community (art. 27). It states the duty to respect and to consider fellow beings without discrimination (art. 28). Other specific provisions include the duty to preserve the harmonious development of the family and to respect and, in case of need, to maintain parents; to serve the national community and not to compromise the security of the State; to preserve and strengthen social and national solidarity and the independence and territorial integrity of the country through contributing to its defence. Individuals also have the duty to work and to pay taxes, to preserve African cultural values and to contribute to the promotion of African unity (art. 29).

3. Institutions

(a) The African Commission on Human and Peoples' Rights

26. The African Commission 9/ is composed of 11 members, elected for a term of six years in their personal capacities by the Assembly of Heads of State and Government of the OAU (arts. 31, 33 and 36). The principal responsibilities of the Commission are the promotion and the protection of human and peoples' rights in Africa.

27. The Commission has the function of ensuring the protection of human and peoples' rights under the conditions established by the Charter. It may interpret provisions of the Charter on the request of a State party, an OAU institution, or another recognized African organization 10/ and it is to perform other tasks entrusted to it by the Assembly. In addition, by article 62 of the Charter, States parties are required to submit periodic national reports on the legislative and other measures taken to give effect to the rights and freedoms guaranteed by the Charter. The Commission has the important role of examining these reports in a dialogue with representatives of the States concerned.

28. There are two forms of communication procedures under the aegis of the Commission. The broad procedure for the examination of communications is set out in the Charter and elaborated in greater detail in the rules of procedure of the Commission.

29. Articles 47 to 54 of the Charter establish an inter-State communication mechanism. All States parties are subject to these procedures by virtue of their adherence to the Charter. A violation of the provisions of the Charter may be alleged by one State against another pursuant to article 47 of the

Charter. If that communication has not been settled within three months, either of the States concerned may submit the matter to the Commission under article 48. The Commission may also be directly seized of a communication by a State party under article 49, without the delay for settlement efforts that is foreseen by article 47. After satisfying itself as to the exhaustion of local remedies, after considering the information obtained from the parties (including any written or oral representations) or from other sources and after having sought an amical solution, the Commission shall prepare a report on the facts and its findings and may make recommendations (arts. 50, 52 and 53). The report of the Commission is sent to the States concerned and communicated to the Assembly of Heads of State and Government.

30. Articles 55 to 59 of the Charter provide for the consideration of other communications which may be submitted to the Commission. The rules of procedure of the Commission clarify that communications may be submitted by the victim of an alleged violation by a State party of a right enunciated in the Charter, or in the victim's name, if he or she is unable to submit it. Communications may also be made by an individual or an organization alleging serious or massive cases, subject to the provision of proof in support of the allegation (rule 114). A series of criteria are established by article 56 of the Charter to determine the communications which are to be considered. They include such matters as the exhaustion of local remedies, compatibility with the African Charter of Human and Peoples' Rights and the OAU Charter.

(b) The Assembly of Heads of State and Government of the OAU

31. The outcome of the Commission's procedures is, in short, the transmission of a report to the Assembly for action. The Assembly is thus the second body for the protection of the rights and freedoms laid out in the African Charter. It alone has the authority to take decisions or other specific action, but any such action would be taken under the conditions established by the Charter of the Organization of African Unity. To date no such action has been called for, as no case has been transmitted to the Assembly by the Commission.

Notes

1/ Examples of such instruments are the Inter-American Convention to Prevent and Punish Torture, the Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty, the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the African Charter on the Rights and Welfare of the Child and the OAU Convention concerning Specific Aspects of Refugee Problems.

2/ An historical overview of the Inter-American system of human rights is found in the Report submitted by the Organization of American States to the International Conference on Human Rights, A/CONF.32/L.10 (1968).

3/ The American Declaration of the Rights and Duties of Man was adopted by the Ninth International Conference of American States in April 1948, along with the adoption of the Charter of the OAS itself. The American Convention on Human Rights was adopted by the Inter-American Conference on Protection of Human Rights in November 1969.

4/ The Commission was created pursuant to Resolution VI of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago, 1959 and the Statute of the Commission was approved by the then Council of the OAS on 25 May 1960.

5/ The Court consists of 26 judges at the date of this report with the post of one judge currently vacant in respect of one further country.

6/ See Rule 30 of the Court's Rules of Procedure. Protocol No. 9 which is not yet in force will enable individuals too to refer a case to the Court after it has been examined by the Commission.

7/ For further information about the origin of the African Charter, see: Etienne Richard Mbaya, "La Charte africaine en tant que mécanisme de protection des droits de l'homme", in: Bernhard/Jolowicz (eds.), International Enforcement of Human Rights, Berlin, 1987, pp. 77-97.

8/ As of 31 June 1991, the African Charter had been ratified by 41 of the 51 member States of the OAU. Ivory Coast, Djibouti, Ethiopia, Kenya, Lesotho, Madagascar, Mauritius, Namibia, the Seychelles and Swaziland have not yet become party to the Charter.

9/ For further information about the Commission, see: Gittleman, Richard, "The African Commission on Human and Peoples' Rights: Prospects and Procedures", in: Guide to International Human Rights Practice, Hurst Hannum (ed.), Philadelphia, 1984, pp. 153-162.

10/ This power to request interpretations of the Charter is wider than under other regional instruments; under the inter-American system only States parties or OAS organs may seek interpretations, whereas under the second Protocol to the European Convention only the Council of Ministers may request advisory opinions.
